

Order

Michigan Supreme Court
Lansing, Michigan

October 6, 2006

Clifford W. Taylor,
Chief Justice

130637 & (18) (23)

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman,
Justices

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

SC: 130637
COA: 263488
Wayne CC: 00-008068-01

DWAYNE PROVIENCE,
Defendant-Appellant.

On order of the Court, the application for leave to appeal the February 9, 2006 order of the Court of Appeals is considered, and it is DENIED, because the defendant has failed to meet the burden of establishing entitlement to relief under MCR 6.508(D). The motions for the appointment of counsel and for an evidentiary hearing are DENIED. The denial of the motion for an evidentiary hearing is without prejudice to the defendant's ability to seek similar relief in the trial court in a successive motion for relief from judgment, filed pursuant to MCR 6.502(G)(2).

WEAVER, J., concurs in the decision to deny leave to appeal.

KELLY, J., would remand this case for resentencing.



s1003

I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

October 6, 2006

Corbin R. Davis

Clerk